

DEFENDANT AB COASTER HOLDINGS, INC.’S MOTION TO DISMISS
PLAINTIFFS’ FIRST AMENDED COMPLAINT

Ab Coaster Holdings, Inc. hereby moves this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss from Plaintiffs' first amended complaint ("FAC"):

1. Counts Ten and Eleven in their entireties;
2. Counts Two, Three, Four, Five, and Six as to patent non-infringement;
3. Counts One, Four, and Six as to patent invalidity and unenforceability; and
4. Count Seven as to trademark non-infringement, trademark unenforceability, and invalidity of Ab Coaster Holdings' federal trademark registration.

Or, in the alternative, Ab Coaster Holdings hereby moves this Court to strike, pursuant to Federal Rule of Civil Procedure 12(f) certain immaterial and impertinent language the Greenses alleged in these Counts.

The grounds for this motion are that, in the FAC, Plaintiffs asserted as Count Ten a claim under 17 U.S.C. § 505 as if Section 505 creates a cause of action when it does not, and they also misrepresented 17 U.S.C. § 412 to make it appear as if it creates an extra hurdle for Ab Coaster Holdings when it does not. They asserted in Counts Six, Seven, and Eleven that Ab Coaster Holdings committed fraud on the public and fraud on the United States Patent and Trademark Office without alleging facts to support any finding of an intent to deceive. They alleged patent or trademark invalidity and unenforceability in Counts One, Four and Seven; and non-infringement in Counts Two, Three, Four, Five, Six, and Seven without alleging any facts to make such a claim plausible.

In each of these instances, the claims fail under both traditional notice pleading standards and the heightened pleading standards mandated by *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009) (holding that claims will survive a motion to dismiss only when it states a plausible claim for relief), and its line of cases.

On April 15, 2010, counsel for Ab Coaster Holdings sent a letter to counsel for the Greenes requesting a pre-filing meeting of counsel pursuant to Local Rule 7.3(b) and offering up proposed dates and times for this meeting. On April 20, 2010, counsel for the Greenes responded in writing disagreeing with Ab Coaster Holdings' arguments and indicating that the Greenes consider the Local Rule 7.3(b) requirements thereby satisfied. The parties therefore reached no consensus, and Ab Coaster Holdings believes the Greenes will oppose the present motion.

Based upon the foregoing grounds discussed in more detail in the attached Memorandum, Ab Coaster Holdings requests that this Court dismiss the claims of the present FAC challenged herein, or at a minimum strike the language as impertinent and immaterial. Ab Coaster Holdings lodges concurrently herewith a proposed order for the Court's convenience.

Respectfully submitted,

Dated: April 23, 2010

By: /s/ Chet J. Bonner
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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2010 a copy of the foregoing Motion to Dismiss Plaintiffs' First Amended Complaint with Memorandum in Support was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: April 23, 2010

By: /s/ Chet J. Bonner
Attorney for Defendant